



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Edward J. Lynch  
Duane Morris LLP  
One Market  
Spear Tower, Suite 2000  
San Francisco, CA 94105

**COPY MAILED**

**MAR 24 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Dabney, et al. :  
Application No.: 10/658,572 :  
Filed: September 9, 2003 :  
Attorney Docket No.: R0367-01901 :

ON PETITION

This a decision on the petition filed January 22, 2004, titled "Petition for Reconsideration of Notice of Omitted Items." The petition will be treated as request to withdraw the Notice of Omitted Items in a Nonprovisional Application" (the "Notice") mailed December 4, 2003, in the above-cited application.

The petition is **dismissed**.

The application was filed on September 9, 2003. The application included thirty-three sheets of drawings, however; none of the figures encompassed in the drawings were labeled "Figure 13" and "Figure 14" as identified in the specification. Accordingly on December 4, 2003, the Initial Patent Examination Division mailed the Notice stating, in pertinent part, that the application had been accorded a filing date of September 9, 2003, but that Figures 13 and 14 appeared to have been omitted.

In response, the present petition was filed. Petitioner therein argued that Figures 13 and 14 were included among the drawings and that petitioner has an Office date-stamped postcard acknowledging receipt of thirty-six sheets of drawings. The petition was accompanied by two sheets of drawings containing Figures 13 and 14.

The arguments have been considered, but are not persuasive. The Patent and Trademark Office (the "Office") file is the official record of the papers originally filed in this application. A review of the application file reveals that thirty-three sheets of drawings were filed on September 9, 2003, but no figures labeled 13 or 14 were found among the thirty-three sheets of drawings originally filed. The Office of Initial Patent Examination correctly issued a Notice of Omitted Items of Nonprovisional Application for Figures 13 and 14 because no figure having such a reference was found in the drawings. Further, the petition papers filed January 22, 2004, did not include a copy of the Office date-stamped postcard, although petitioner indicated that such evidence would be provided.

The petition is dismissed.

Of course, applicant may submit figures labeled 13 and 14 in the form of an amendment for consideration by the examiner to determine whether the drawing contains new matter compared to the original specification and drawings filed September 9, 2003. See 37 CFR 1.121.

The application is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of September 9, 2003, using the thirty-three sheets of drawings filed September 9, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin  
Petition Attorney  
Office of Petitions